

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:18CV107

BRENDA PEREZ,)
)
Plaintiff,)
)
vs.) ORDER
)
STEVE HUMPHRIES, et al.,)
)
Defendants.)

)

This matter is before the Court on American & Efird LLC's ("A&E") Motion to Dismiss.

A *Roseboro* notice was sent to the *pro se* Plaintiff, who timely filed a response in opposition to the motion. A&E has filed a Reply. Accordingly, this matter is ripe for disposition.

Pursuant to Rule 10(a) of the Federal Rules of Civil Procedure: "Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties." Fed. R. Civ. P. 10(a) (emphasis added). A plaintiff's failure to name a defendant in the caption of a Complaint renders any action against the purported defendant a legal nullity. *See, e.g. Shine v. Charlotte Mecklenburg Police Department*, No. 3:17-cv-306-FDW, 2018 WL 2943456, *2 (W.D.N.C. June 12, 2018) ("The body of the Complaint contains allegations against individuals who are not named as defendants in the caption as required by Rule 10(a). This failure renders Plaintiff's allegations against them nullities.").

A&E was not named as a defendant in the caption of Plaintiff's Complaint, nor was it named as a defendant in the body of Plaintiff's Complaint, which expressly identifies only five

individuals as defendants. Moreover, A&E was not named as a defendant in the five summonses Plaintiff filed contemporaneously with her Complaint. This Court dismissed all individual defendants via its Order dated March 13, 2018, because there is no individual liability under Title VII of the Civil Rights Act of 1964. In that Order, however, the Court misread a typographical error¹ in a street address listed by Plaintiff for service to the individual defendants at “24 American &Efird” as a corporate defendant. It appears to the Court that A&E is not, in fact, a defendant in this case.

Plaintiff received her “Notice of Right to Sue” from the Equal Employment Opportunity Commission on December 11, 2017. (Doc. No. 1, ¶4). Plaintiff’s ninety-day deadline to file a Complaint against A&E expired on Monday, March 12, 2018. Any Complaint filed by Plaintiff against A&E at this point would be more than six months too late. Accordingly,

IT IS THEREFORE ORDERED that A&E’s Motion to Dismiss is hereby granted and the Complaint is dismissed with prejudice.

Signed: October 1, 2018



Graham C. Mullen
United States District Judge



¹ This is a typographical error as the actual street address listed in the summonses is “American and Efird, 24 American St., Mt. Holly, NC 2812.”